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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/633,028	08/01/2003	Roger Walmsley	3501	4717
27727	7590	03/25/2004	EXAMINER	
PEDERSEN & COMPANY, PLLC P.O. BOX 2666 BOISE, ID 83701			MACARTHUR, VICTOR L	
			ART UNIT	PAPER NUMBER
			3679	

DATE MAILED: 03/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/633,028

Applicant(s)

WALMSLEY, ROGER

Examiner

Victor MacArthur

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-9 and 11 is/are rejected.
- 7) ☒ Claim(s) 10 and 12 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 01/02/2004.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

In accordance with MPEP § 609, 707.05 and 2001.06(b); the prior art cited in the parent application was reviewed prior to preparation of this Office Action.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-9 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Schall U.S. Patent 5660378.

Claim 1. Schall discloses (figs.1-4) a vertical fencing comprising a pair of rails (top rail 11 shown in fig.1 and bottom rail 11 shown in fig.4, as described in col.3, 3-15) and a plurality of fence member (1) attached thereto, the fence members being pivotable (due to play between 1 and 11 that is present prior to the figure 2 engagement of 21 within 19) relative to the rails, at least one of the rails having a recess means (recess within 11), in which the fence members are tubular, and in which each fence member carries a resiliently-biased projection (21) which is engageable with the recess means.

Claim 2. Schall discloses that the fence member has a longitudinal axis, and in which the projection engages the recess means to limit movement of the fence member parallel to the longitudinal axis (col.3, ll.40-55).

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Claim 3. Schall discloses that the fence member has a longitudinal axis, and in which the projection engages the recess means to limit rotation of the fence member about the longitudinal axis (as seen in fig.2).

Claim 4. Schall discloses that at least one of the rails comprises a channel section (channel formed by 13, 15 and 17).

Claim 5. Schall discloses that the channel section includes an in turned part (19), and in which the recess means is provided by a notch (fig.2, notch receiving 21 within 19) in the in turned part.

Claim 6. Schall discloses that the channel section includes an in turned part (19), and in which the recess means is provided by a hole (fig.1, hole receiving 21 within 19) in the in turned part.

Claim 7. Schall discloses a spring clip (23), and in which the resiliently biased projection is provided by a part of the spring clip.

Claim 8. Schall discloses that the spring clip is located within the fence member (see fig.1).

Claim 9. Schall discloses that the fence members and rails lie substantially in a plane, and in which the projection has a longitudinal axis, the axis being substantially perpendicular to the plane.

Claim 11. Schall discloses that one of the rails has a further recess means (dotted line shown in fig.4, col.3, ll.11-13) and in which the fence members each carry a fixed peg (portions of 1 received within top 11 and bottom 11), the recess means of one of the rails engaging the

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projection (21) and the further recess means of the other rail engaging the fixed peg (col.3, ll.12-15).

Allowable Subject Matter

Claims 10 and 12 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 10. The prior art does not disclose or suggest that the fence member pivots relative to the at least one of the rails about the longitudinal axis of the projection.

Claim 12. Schall discloses that the further recess means comprises a notch (four corner notches shown by dotted line of figure 4). The prior art does not disclose or suggest an extension thereof, the extension being provided to permit rotation of the fence member so that the fixed peg can engage the notch.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Referring to fences:

Spscha U.S. Patent 2808233

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor MacArthur whose telephone number is (703) 305-5701.

The examiner can normally be reached on 8:30am - 5:00pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynne Browne can be reached on (703) 308-1159. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.



VLM
March 18, 2004



Lynne H. Browne
Supervisory Patent Examiner
Technology Center 3600